Single Bench

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IN THE HON'BLE HIGH COURT OF JUDICATURE, CHHATTISGARH at BILASPUR (CG)

WRIT PETITION NO. 1303 /2005

Prabhakar Dubey
S/o Shri. Premnarayan Dubey,
Aged about Years,
Ex.Constable No. R/795,S.A.F.,
Ist Battallian, Bhilai Unit,
BHILAI. District : Durg.
Residing at : Mal Kirana Stores,
Nandini Road, Power House,
Post : Khursipar, BHILAI
District : Durg (CG). ..... PETITIONER

VERSUS

1. State of Chhattisgarh
Through : The Secretary,
Ministry of Home,
RAIPUR.

2. The Commandant,
11 th Battalian,
Special Armed Forces,
BHILAI – 490001
District: Durg (CG)

3. The Commandant,
Chhattisgarh Armed Forces,
First Battalian,
BHILAI – 490001
District : Durg (CG).

4. The Dy. Director General of Police,
Chhattisgarh Armed Forces,
BHILAI– 490001
District : Durg (CG).

5. The Director General of Police,
Police Headquarter,
Chhattisgarh Police,
RAIPUR – 492001 (CG) ..... **RESPONDENTS**

P.R. No. 1294/05
Presented by Shri Utkarsh Pandey
dated 24/3/05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE ORDER AND WRIT IN THE NATURE OF CERTIORARY, MANDAMUS ETC.

(72)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.1303 OF 2005

Petitioner : Prabhakar Dubey

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Uttam Pandey, counsel for the petitioner.
Ms. Sunita Jain, Panel Lawyer for the respondents/State.

ORDER
(Passed on 13th Day of December, 2006)

The petitioner, while working as Constable in the 11th Battalion of Special Armed Forces, Government of Chhattisgarh, was served with a charge-sheet dated 9-7-2000 containing following charges :-

"1. That, he was found in the intoxicating condition at Awapalli Market during his duty hours on 21.5.2000.

2. That on 21.5.2000, he was misbehaved and snubbing with his senior officer, Assistant Sub-Inspector Mr. Bamshankar Mishra and threatened for exploding the Camp, and therefore violated the Section 17 of the M.P. Special Force Act, 1968.

3. That, he beated and threatening for dare consequences of life with Mr. Loman Singh, Head

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Constable R/761 while he was Mediating, and thus violated Sub rule (j) of Section 17 of M.P. Special Force Act, 1968.

4. That, he beated and misbehaved and snubbing with R/ 291 Beniram Sahu on account of his mediating, and threatening for life, thus showed indiscipline in the force.

5. That, on 21.5.2000 night, by putting Rifle on the Chest of Shayamlal R/720 and beated him by threating him for life and violated sub rule (Kh) of Section 16 of M.P.Special Foce Act, 1968."

2. Admittedly, the petitioner filed a reply to the said charge-sheet on 20-7-2000 (Annexure P-2). Thereafter, an enquiry was held. The enquiry officer was the Company Commandant. The petitioner participated in the enquiry. The petitioner did not raise any objection with regard to non-supply of any document or any papers. After completion of the enquiry, all the charges alleged against the petitioner were found proved.

3. Respondent No.2 -- the Commandant, agreeing with the enquiry report, issued a second show cause notice to the petitioner. The petitioner, in his reply to the second show cause notice, also did not mention about the fact that relevant documents were not supplied to him on the basis of which charges were found proved.

4. Thereafter, the petitioner was dismissed from service as punishment by order dated 2-3-2002 (Annexure P-13) passed by the Commandant, Chhattisgarh Armed Forces, First Battalion, Bhilai.

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5. The petitioner preferred an appeal before the Deputy Inspector General, Chhattisgarh Armed Forces, which was dismissed by order dated 1-6-2002 (Annexure P-14). Against the decision in the said appeal, the petitioner preferred another appeal before the Director General of Police, Police Headquarters, Raipur, which was also dismissed by order dated 1-8-2003 (Annexure P-16).

6. The petitioner has filed this petition being aggrieved by the order dated 2-3-2002 (Annexure P-13) passed by the Commandant, Chhattisgarh Armed Forces, First Battalion and subsequent orders dated 1-6-2002 (Annexure P-14) passed by the Deputy Inspector General, Chhattisgarh Armed Forces and dated 1-8-2003 (Annexure P-16) passed by the Director General of Police, on the ground that the enquiry is vitiated on account of the fact that the petitioner was not supplied necessary documents.

7. Ms. Sunita Jain, learned Panel Lawyer appearing for the respondents/State, on the contrary, relying on the return filed by the respondents/State, submitted that all the relevant documents, on the basis of which, alleged charges have been found proved, were supplied to the petitioner and the petitioner has not raised any objection to this effect before filing this petition.

8. After hearing learned counsel for the parties and perusing the pleadings and the records appended thereto, it is evident that the ground of non-supply of documents, which has been raised in the petition for the first time, is not available to the petitioner as the petitioner had not raised this point at any stage, neither in the stage of

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departmental enquiry nor at the stage of show cause notice nor thereafter, and the respondents – authorities have categorically denied the allegation of non-supply of documents made by the petitioner.

9. In view of the aforementioned, it is clear that there is no infirmity or irregularity or illegality in the procedure of departmental enquiry and thereafter.

10. It is well settled principle of law that the Court, while exercising its power of judicial review, can go into the decision making process, but not the decision itself. In the present case, no perversity or illegality or irregularity or impropriety is alleged or found in the decision making process.

11. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal